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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	NO. 1:16-CR-02066-RMP
Plaintiff,)	
v.)	GOVERNMENT'S SENTENCING
)	MEMORANDUM
JOSE ALBERTO ABUNDIZ,)	
Defendant.)	

Plaintiff, United States of America, by and through Joseph H. Harrington, Acting United States Attorney for the Eastern District of Washington, and Ian L. Garriques, Assistant United States Attorney, submits the following sentencing memorandum.

I. SENTENCING RECOMMENDATION

Pursuant to the Rule 11(c)(1)(C) plea agreement in this case, the government recommends a sentence of 150 months of imprisonment to be followed by 5 years of supervised release.

In the plea agreement, the parties agreed to a base offense level of 34 due to the quantity of methamphetamine involved, a 2-level increase due to the involvement of a firearm, and a 3-level reduction for acceptance of responsibility. With an anticipated total offense level of 33 and criminal history category of III, the parties expected the Guidelines sentencing range of imprisonment to be 168-210 months. With that range in mind, the parties also agreed to request a sentence of 150 months of imprisonment based on a downward variance and the relevant Section 3553(a) factors.

The PSR corresponds to the preceding calculations except for its additional

1 classification of Defendant as a Career Offender pursuant to U.S.S.G. §§ 4B1.1 and
2 4B1.2. The PSR's designation of Defendant as a Career Offender increased his total
3 offense level to 34 and criminal history category to VI, thus increasing his Guidelines
4 sentencing range to 262-327 months of imprisonment.

5 Though Defendant's 2005 drug trafficking conviction (PSR ¶ 96) clearly qualified
6 as one of the two necessary predicate convictions for a Career Offender designation, the
7 parties did not anticipate that Defendant's 2007 possession of an unregistered firearm
8 conviction (sawed-off shotgun) (PSR ¶ 104) would qualify as a second predicate
9 conviction for Career Offender status. (PSR ¶¶ 61-64). Guidelines Amendment 798,
10 effective August 1, 2016, added the following enumerated offense to the definition of a
11 crime of violence to determine Career Offender Status: "the use or unlawful possession
12 of a firearm described in 26 U.S.C. § 5845(a)[.]" U.S.S.G. § 4B1.2 (eff. Aug. 1, 2016).
13 Prior to the Amendment, such convictions were not expressly included as an enumerated
14 crime of violence. Rather, some reference was made to similar convictions in prior
15 commentary notes to the Guideline but not in the text of the Guideline itself. Given that
16 the parties were unaware that Defendant's firearm conviction would now be considered a
17 crime of violence under Amendment 782, the parties did not anticipate a Career Offender
18 designation here.

19 Regardless of the foregoing, the government stands by the plea agreement and
20 recommends a sentence of 150 months of imprisonment. Based on Section 3553(a), a
21 term of imprisonment of 150 months (to be followed by 5 years of supervised release)
22 appropriately balances the need for deterrence and protection of the public against
23 Defendant's history and characteristics. Despite Defendant's prior firearms and drug
24 trafficking convictions, the proposed term of imprisonment here is almost three times as
25 long as Defendant's prior federal term of imprisonment of 57 months. Additionally,
26 despite the large quantity of methamphetamine here and number of firearms involved,
27 Defendant accepted responsibility in this case and pleaded guilty without motion practice
28 and trial. Defendant would also be approximately age fifty or more before being released

1 from the proposed term of incarceration.

2 Based on the foregoing, a sentence of 150 months of imprisonment, to be followed
3 by 5 years of supervised release, appropriately balances Defendant's history and
4 characteristics, the seriousness of the offense, and the need to promote respect for the
5 law, provide just punishment, deter further criminal conduct, and protect the public.

6 DATED: August 31, 2017

Respectfully submitted,

7 JOSEPH H. HARRINGTON
Acting United States Attorney

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9 By: s/ Ian L. Garriques
Ian L. Garriques
Assistant U.S. Attorney

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11 I hereby certify that on August 31, 2017, I electronically filed the foregoing with
12 the Clerk of the Court using the CM/ECF System which will send notification of such
13 filing to the following: Gregory L. Scott.

14 s/ Ian L. Garriques
15 Ian L. Garriques
Assistant U.S. Attorney